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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/781,516	02/18/2004	Gregory J. Maki	2374.71US02	2949

24113 7590 10/04/2004

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EXAMINER


WHITE, RODNEY BARNETT

ART UNIT	PAPER NUMBER
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3636

DATE MAILED: 10/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/781,516	<b>Applicant(s)</b> MAKI ET AL	
	<b>Examiner</b> Rodney B. White	<b>Art Unit</b> 3636	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 August 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.  
     4a) Of the above claim(s) 18 and 19 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 20 is/are allowed.
- 6) ☒ Claim(s) 1-9, 12 and 14-17 is/are rejected.
- 7) ☒ Claim(s) 10, 11 and 13 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>8/13/04</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-17 and 20, drawn to a rocker-recliner chair and mechanism, classified in class 297, subclass 259.2.
- II. Claims 18-19, drawn to a method of manufacturing a rocker mechanism, classified in class 29, subclass 434.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the rocker mechanism can be made in a variety of ways, such providing the rocking motion with the springs but with or without the rocker cams or providing the rocking motion with rocker cams but no springs. Also, the rocker mechanism can be attached to the chair in a number of ways as well, as the prior art discloses, and not necessarily by the method disclosed in the present invention.

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Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II, restriction for examination purposes as indicated is proper.

During a telephone conversation with Douglas J. Christensen (# 35,480) on September 23, 2004 a provisional election was made without traverse to prosecute the invention of I, claims 1-17 and 20. Affirmation of this election must be made by applicant in replying to this Office action. Claims 18-19 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

### ***Claim Objections***

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Claim 4 is objected to because of the following informalities: On line 1, the phrase "the each" is incorrect grammar. The word "the" after "wherein" should be removed. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 7 and 15-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 7, line "the respective rocker blocker" lacks antecedent basis. The "rocker blocker assembly" isn't claimed until claim 8. However, claim 7, depends from claim 1 where no rocker blocker has been defined or claimed.

In claim 15, line 2, "the lower support plate" lacks antecedent basis.

In claim 16, lines 3-4, "the lower support plate" and "said lower support plate" lack antecedent basis.

In claim 17, lines 3-4, "the lower support plate" (2 instances) lacks antecedent basis.

The aforementioned problems render the claim vague and indefinite. Clarification and/or correction is required.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 5-9, 12, and 14-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Re' (U.S. Patent No. 3,279,847).

Re teaches a rocker-recliner chair comprising: a rocker mechanism, a reclining linkage mechanism attached to the rocker mechanism a chair frame having a seat, backrest, armrests and a footrest operably attached to the reclining linkage mechanism, wherein the rocker mechanism comprises an upper plate assembly 24 having a pair of side flanges 26 and an upper support plate 24, 28 extending between and connecting to the side flanges, a base having a pair of side rails and a lower support plate extending between the side rails, the base having a cam engaging horizontal surface, a pair of rocker cams 20 attached to each side flange, one cam rockingly engaged to each side rail 18; and two pairs of springs 22, each spring attached directly to the lower support plate and the upper support plate by attachment means integral with the upper support plate and integral with the lower support plate respectively, the upper support plate has a width and a depth and is configured as a tray with upraised lip portions extending the width of the upper support plate.

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Re in view of LaPointe et al (U.S. Patent No. 5,171,000).

Re' teaches the structure substantially as claimed but does not specify the method of attaching the springs to the upper plate. However, LaPointe et al teach such the method as discloses in claims 4 and 16 to be old. It would have been obvious and well within the level of ordinary skill in the art to attach the springs in the Re' reference, to be attached to the upper plate, as taught by LaPointe et al since such a method of attachment is an alternative convention method of attaching such springs in rocker recliner chairs and provide Re' structure with the benefits of such an attachment.

Claim 17 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Claims 10-11 and 13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 20 is allowed.

The following is a statement of reasons for the indication of allowable subject matter: Prior art does not teach, or more specifically, Re' does not teach that the upper support plate has an offset rib formed therein by deformation of the plate, the rib extending at least substantially the width of the upper support plate, as defined in claim 10. Prior art does not teach the lower support plate having a width and a depth and is configured as a tray with raised lip portions extending the width of the lower support plate as defined in claim 11 and 17. Prior art does not teach the upper support plate and the lower support plate each having a width and a depth and each having a central hole with the respective central hole extending at least the majority of the distance of the depth and the majority of the distance of the width, as defined in claims 13 and 20. If prior does teach these features there is no need to modify the Re' reference which functions as the present invention does and works just as well without these features.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Cupp, Harmon, Tunnell, Fox, Knabusch et al, Flethcher, Martin et al, Underdown, Sr. Katz, Re', Hughes, Mizelle et al, Rogers, Jr. et al, Craig, Belisle, Jones, Mizelle, LaPointe, Rogers, Jr. Fay et al, De Santis, Pine, and Rogers teach rocking reclining mechanisms and chairs similar to the present invention.



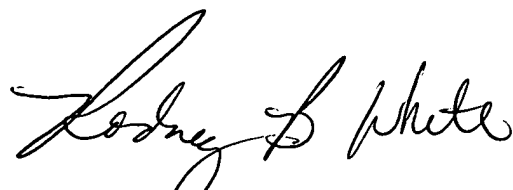
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rodney B. White whose telephone number is (703) 308-2276.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Cuomo can be reached on (703) 308-0827. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Rodney B. White,  
Patent Examiner  
Art Unit 3636  
September 24, 2004



RODNEY B. WHITE  
PRIMARY EXAMINER